

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

**PLAINTIFFS' UNOPPOSED NOTICE OF MOTION AND
MOTION TO MODIFY SCHEDULING ORDER**

Plaintiffs respectfully move for an extension of ninety days to the scheduling deadlines presently set by the Court's scheduling order. (*See* May 15, 2020 Minute Order). In support of this Motion, Plaintiffs state:

1. Under the present schedule, the deadline for completion of fact discovery and any accompanying motions to compel is December 12, 2020. The Court has set additional deadlines for completion of all expert discovery by December 12, 2020 with initial reports to be filed by January 31, 2021, rebuttal reports to be filed by March 2, 2021, and all expert depositions to be completed by March 25, 2021. The deadline for filing dispositive motions is April 30, 2021. *See* May 15, 2012 Minute Order granting Plaintiffs' Consent Motion to Modify Scheduling Order (ECF No. 61).
2. Since entering the May 15, 2020, scheduling order, Plaintiffs have filed a motion to compel discovery (ECF No. 65), and have noticed 40 depositions.
3. As explained in Plaintiffs' motion to compel, Defendants still have not produced even half of the ESI documents, metadata information, and IAD files they were ordered to produce in December 2019 (*see* ECF No. 51). In addition, Defendants have not

- produced other discovery sought by Plaintiffs, including certain monthly and daily Housing Unit and Strike Force reports, officer employment histories, complaints to the Commission on Citizen Rights and Community Relations, and documents in response to Plaintiffs' Fourth Set of Requests for Production.
4. With respect to the production of ESI, Defendants have stated that they have only produced approximately 50% of the documents corresponding to Plaintiffs' first 20 priority search terms and custodians. ECF No. 67, ¶ 36. Defendants have further represented that they estimate that they will not complete production of the remaining ESI documents for these custodians and search terms until the end of 2020 (which would be after the close of fact discovery under the current schedule) though it may take longer. *Id.* ¶¶ 39-40. Plaintiffs expect to need to add additional custodians and search terms when production of the first tranche is complete.
 5. In addition, Defendants have stated that the COVID-19 outbreak continues to impact Defendants' search for and production of certain categories of discovery. *See id.* ¶ 52.
 6. With respect to the IAD files, Defendants still have not produced more than half of the files they were ordered to produce in the Court's December 2019 Order, and represent (without providing evidence) that the remaining IAD files have been destroyed. ECF No. 68, at 5. Plaintiffs' motion to compel seeks an affidavit and discovery concerning the circumstances the alleged destruction of these files, which would require additional time in the schedule to complete. *See id.*
 7. Plaintiffs' motion to compel also seeks certain monthly and daily Housing Unit and Strike Force reports, officer employment histories, complaints to the Commission on Citizen Rights and Community Relations, and documents in response to Plaintiffs'

Fourth Set of Requests for Production. If Plaintiffs' motion is granted, additional time will be necessary in order for Defendants to complete production of these documents and for Plaintiffs to review them. Plaintiffs' experts cannot perform their statistical analysis until Defendants provide complete officer employment histories.

8. With respect to depositions, the parties are in the process of meeting and conferring concerning the number and schedule for depositions. Plaintiffs noticed 39 individual depositions on November 11, 2020, and noticed a Rule 30(b)(6) deposition of the City of Buffalo on November 12, 2020.¹
9. Because the discovery sought from Defendants that has not yet been produced is materially relevant to Plaintiffs' ability to prepare for depositions, Plaintiffs have only been able to take one deposition so far.
10. Plaintiffs anticipate that the process of taking depositions will require several months, and cannot be completed in the less than one month remaining until the end of fact discovery.
11. Accordingly, Plaintiffs respectfully request the following modifications of the schedule:

Deadlines	Current Date	Modified Date
Deadline for completion of fact discovery	December 12, 2020	March 12, 2021
Deadline for motions to compel discovery	December 12, 2020	March 12, 2021
Deadline for service of Initial Expert Reports	January 31, 2021	May 4, 2021
Deadline for service of Rebuttal Expert Reports	March 2, 2021	June 1, 2021
Deadline for completion of all expert discovery (incl. expert depositions)	March 25, 2021	June 23, 2021
Deadline for Dispositive Motions	April 30, 2021	July 29, 2021

¹ We have begun discussions with Defendants about raising the deposition limits of Fed. R. Civ. P. 30(a)(2)(A)(i), (d)(1), as contemplated by paragraph 7 of the Discovery Plan (ECF No. 13), but those discussions have not yet reached conclusion.

12. Plaintiffs have conferred with counsel for Defendants regarding this request for an extension of discovery and dispositive motion deadlines, and Defendants have stated that they consent to the request.

13. Assuming Defendants finally begin to satisfy their discovery obligations, extending the discovery schedule will permit the parties sufficient time to complete discovery, thereby increasing the likelihood that they may narrow the issues in dispute. Accordingly, good cause exists to justify this request to extend the discovery and dispositive motion deadlines by three months.

WHEREFORE, Plaintiffs respectfully request that the Court modify the schedule as proposed.

Dated: November 17, 2020

/s/ Keisha A. Williams
Joseph Keleman
Keisha Williams
WESTERN NEW YORK LAW CENTER
Cathedral Park Tower
37 Franklin Street, Suite 210
Buffalo, NY 14202
Tel: (716) 828-8415
Fax: (716) 270-4005
jkeleman@wnylc.com
kwilliams@wnylc.com

/s/ Darius Charney
Darius Charney
Chinyere Ezie
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
212-614-6475
DCharney@ccrjustice.org
CEzie@ccrjustice.org

Respectfully submitted,

/s/ Claudia Wilner
Claudia Wilner
Edward Krugman
Britney Wilson
NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE
275 Seventh Avenue, Suite 1506
New York, NY 10001
212-633-6967
wilner@nclej.org
krugman@nclej.org
wilson@nclej.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Claudia Wilner